

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

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4 M. DIANE KOKEN, : Civil Action No.
5 Plaintiffs, : 07-048-JJF
6 : :
7 v. : :
8 PAULA FINANCIAL, : :
9 Defendant. : :
10 : :
11 - - -

12 April 24, 2008
13 - - -

14 United States District Court
15 866 King Street - Second Floor
16 Wilmington, Delaware

17 Telephone Conference
18 Thursday, April 24, 2008
19 5:30 p.m.

20 BEFORE: THE HONORABLE MARY PAT THYNGE
21 - - -

22 BSR -- BASYE SANTIAGO REPORTING
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1 APPEARANCES :

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THE COURT: Gentlemen, the purpose of this was to have a formalized record before you actually draw up the agreement as to what the terms and conditions of the settlement are. My understanding is this and I just want to confirm with both sides that there is an agreement in the amount of \$2 million to settle this case. Is that agreed to by the plaintiff, Gerry?

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MR. ARTH: Yes, Your Honor.

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THE COURT: Is that agreed to by the defendant, Bill?

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MR. SWANK: Yes.

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THE COURT: The agreement also is that \$2 million would be paid within 30 days of the execution of the settlement documents; is that agreed to Gerry?

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MR. ARTH: Yes, Your Honor.

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THE COURT: And is that agreed to, Bill?

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MR. SWANK: Yes.

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THE COURT: There is going to

1 be a release of all claims that arose in
2 this case. The parties would execute a
3 stipulation of dismissal. Each side of
4 course would be responsible for their own
5 fees and costs. Is that understood as well
6 too, Gerry?

7 MR. ARTH: Yes.

8 THE COURT: Is that understood
9 as well, Bill?

10 MR. SWANK: Yes, although we
11 are discussing broader releases, mutual
12 general releases which is what I think we
13 requested. Gerry asked for some information
14 which, Gerry, I e-mailed to you.

15 MR. ARTH: I got it, Bill,
16 thank you. And I forwarded it to my client.
17 I probably will not be able to get back to
18 you until early next week about it. But if
19 that's the extent of it, Bill, I think that
20 we may be able to work that out.

21 MR. SWANK: Okay.

22 THE COURT: So you were
23 looking for mutual general releases and I
24 think Gerry had a concern about subrogation?

1 MR. ARTH: We were concerned
2 about possible claims and we have done
3 internal searches on that and I asked Bill
4 to provide some information from his clients
5 at Angle which he has given to me and I have
6 forwarded to my client. I am consciously
7 optimistic that we'll be able to provide the
8 general release and get one in return.

9 THE COURT: Okay.

10 MR. ARTH: At the very least
11 there will be a release of all claims in
12 this litigation that arises under the
13 indemnification agreement.

14 THE COURT: All right. If you
15 run into problems concerning this on the
16 release issue get back to me as soon as
17 possible. Do you wish for me to do anything
18 because I don't want to lose this
19 possibility of getting a settlement done,
20 and if there is ways of talking about it if
21 I can be of any assistance fine. If the two
22 of you can work it out that doesn't concern
23 me if you can work it out.

24 What would you like me to do

1 regarding Judge Farnan, he is unaware of the
2 fact that the parties have reached at least
3 an agreement in principle for the most part
4 with the caveat about mutual general
5 releases and the limitation of concern that
6 might be there. Do you want me to say
7 anything to him?

8 MR. ARTH: Your Honor, I think
9 Judge Farnan gave us an extension; I think
10 he had given us an additional 60 days the
11 last time. I would just prefer that we work
12 out our issues and get the agreement done
13 and then advise Judge Farnan of the
14 settlement because I don't believe that we
15 are under any immanent time pressure.

16 MR. SWANK: That's fine with
17 me, Judge.

18 THE COURT: That's fine with
19 me too as long as you don't find yourself in
20 that circumstance later on down the road.
21 That's why I think working this out within
22 the next week, that is by next Thursday or
23 so would probably be appropriate.

24 MR. ARTH: We would certainly

1 hope to have that done because from my
2 client's perspective they want to get it
3 done and have the money as soon as possible.
4 So my guess is that once we work this issue
5 out about the release, Judge, I could turn
6 out a draft settlement agreement to Mr.
7 Swank in a day or so.

8 MR. SWANK: My client, as you
9 know Judge, won't be back until May 5th.

10 THE COURT: Okay. I didn't
11 know he was going to be gone that long, how
12 nice. I just wanted to make sure that the
13 parties understood that they had an
14 agreement sooner rather than later.

15 Do either of you wish to have
16 a transcript of these proceedings or do you
17 just want to have a court copy? Since it's
18 settlement I would hold on to the Judge's
19 copy of this and wouldn't make it a part of
20 the court record unless the two of you ran
21 into a problem.

22 MR. ARTH: That would be fine,
23 Your Honor.

24 MR. SWANK: That is

1 sufficient. I do not think I need a copy,
2 Judge.

3 THE COURT: Gerry, do you want
4 a copy?

5 MR. ARTH: I do not need a
6 copy at the moment, Your Honor. Thank you.

7 THE COURT: Is there anything
8 else about the general overview of the
9 settlement that you think needs to be added
10 on the record?

11 MR. SWANK: Just that the
12 settlement agreement will contain the usual
13 provisions of a settlement agreement, the
14 authority that you own the claims and that
15 you have the authority to release them, just
16 the general --

17 THE COURT: Boilerplate
18 language?

19 MR. SWANK: Yeah, I don't know
20 how to describe it beyond that.

21 MR. ARTH: Your Honor, a
22 simple agreement and, Bill, obviously we
23 would want the settlement proceeds wired, I
24 don't think that would be a problem.

Page 9

1 MR. SWANK: I don't think it
2 will be, no.

3 MR ARTH: Very well.

4 THE COURT: Thank you both.
5 Take care now.

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8 (Telephone conference
9 concluded at 5:43 p.m.)

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